CHARLENE AND ROBERT SCHILLING

IBLA 83-359 Decided May 23, 1985

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring a mining claim abandoned and void for failure to file annual proof of labor or notice of intent to hold. I MC 17923.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

2. Mining Claims: Assessment Work

   The filing of evidence of assessment work in the county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

3. Constitutional Law: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

   The Supreme Court has definitively established in United States v. Locke, 105 S. Ct. 1785 (1985), that the provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, which provide that, upon the failure of a mining claimant to timely file annually either evidence of the performance of annual

assessment work or a notice of intention to hold a mining claim, the claim is conclusively deemed abandoned and void, is constitutional and does not result in a deprivation of due process of law.

APPEARANCES: Charlene and Robert Schilling, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Charlene and Robert Schilling (appellants) have appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated January 4, 1983, which declared the Gladiola #1 mining claim, I MC 17923, abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the claim for calendar year 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2.

On appeal to the Board, appellants assert that the claim has not been abandoned and that all proofs of labor were timely filed with the Shoshone County Recorder's office. Appellants contend that the State law is clear that only a failure to make expenditures will subject a claim to relocation or invalidation, and that the Federal law is in conformance with the State law. Further, appellants contend that the irrebuttable presumption of abandonment arising from a failure to annually file either an affidavit of performance of assessment work or a notice of intention to hold a mining claim violates the due process clause of the Fifth Amendment of the United States Constitution, in that they possess a property right which cannot be abrogated, "without at least an administrative hearing."

[1, 2] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land shall file with the proper office of BLM before December 31, of each year, a proof of labor or notice of intention to hold the mining claim. The statute also provides that failure to file such instruments within the prescribed time period shall be deemed conclusively to constitute an abandonment of the mining claim. As no proof of labor was received within calendar year 1981, BLM properly deemed the claim to be abandoned and void. Mermaid Mining Co., 65 IBLA 172 (1982); Kivalina River Mining Association, 65 IBLA 164 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

With regard to appellants' statement that all proofs of labor were timely filed with the Shoshone County Recorder's office, we note that while this may have met the requirements of the applicable state law, it did not accomplish compliance with the Federal recordation statute. Section 314 of FLPMA is independent from both state recordation requirements and the annual assessment work requirement of 30 U.S.C. § 28 (1982). Therefore, neither actual performance of the assessment work nor filing evidence thereof in the county constitutes full compliance with section 314. Section 314 is complied with only where a claimant files annually with BLM a copy of the affidavit of

labor or notice of intention to hold the claim which has been filed in the county. Appellants admit that they failed to submit a copy of their affidavit of assessment to BLM within calendar year 1981 (Statement of Reasons at 4). Since such a filing was not made, the statute clearly compels the conclusion that the Gladiola #1 mining claim is abandoned and void. 43 U.S.C. § 1744(c) (1982).

[3] Finally, appellants assert that 43 U.S.C. § 1744(c) (1982), is unconstitutional. In support of their contention, appellants cite Rogers v. United States, 575 F. Supp. 4 (D. Mont. 1982).

In Rogers v. United States, the court held that the failure of section 314 of FLPMA to provide for notice and an opportunity for hearing prior to a determination that claims were abandoned and void violated fundamental procedural due process. A similar decision was subsequently issued by the Nevada District Court in Locke v. United States, 573 F. Supp. 472 (1983). An appeal from this latter decision was taken to the United States Supreme Court. On April 1, 1985, the Supreme Court reversed the decision of the Nevada District Court sub nom. United States v. Locke, 105 S. Ct. 1785 (1985).

The Supreme Court noted that "Congress has made it unnecessary to ascertain whether the individual in fact intends to abandon the claim, and there is no room to inquire whether substantial compliance is indicative of the claimant's intent -- intent is simply irrelevant if the required filings are not made." Id. at 1796. Thus, inasmuch as appellants do not allege that they did make a filing within calendar year 1981, there is no need for a fact-finding hearing as to whether appellants intended to abandon their claim. The failure to file, in and of itself, constituted abandonment of the claim under the statute. Appellants have not been deprived of any due process rights. Id.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

James L. Burski
Administrative Judge.